IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3918 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESHCHANDRA SANADKUMAR BHATT - Petitioner(s)
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION & 1 - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for Petitioner(s) : 1,
MS LILU K BHAYA for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 05/07/2006

ORAL JUDGMENT

The petitioner, one Mukeshchandra Sanadkumar Bhatt describing himself as proprietor of Messrs K.P.

Chemical Industries at Plot No.621, 100 Sheds Areas, GIDC, Vapi, is before this Court, complaining that the respondent-GIDC is not adhering to its policy in respect of the allotment of residential plots.

2. Relief sought by the petitioner is in para 10B, which reads as under:

> "This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to allot the land admeasuring 1,200 sq. mtrs. in the residential zone of Vapi belonging to the respondent no.1-corporation which is in custody of the respondent no.2 to the petitioner." (emphasis supplied)

The petitioner has next prayed for the relief in para 10(C) which reads as under:

> "This Hon'ble Court be pleased to order an inquiry into the allotment made by the

> respondents of residential plots in Vapi Industrial Area between the period 1994 to 2005 and if the allotment of residential plot between the period 1994 to 2005 are found to be made contrary to the policy of the corporation then this Hon'ble Court be pleased to hold the officers liable of causing loss to the corporation and order recovery of the aforesaid losses from the said officers who are found guilty by issuing appropriate writ, order or direction.” (emphasis supplied)

There cannot be any doubt about the nature of the relief which prima facie renders this petition in the category of a public interest litigation.

3. The petitioner by way of ad interim relief has prayed for as under:

> “Pending admission and/ or final disposal of this Special Civil Application, this Hon'ble Court be pleased to restrain the respondents

from allotting plot no.113 situated at Vapi Industrial Area belonging to the Gujarat Industrial Development Corporation admeasuring 700 sq. mtrs. to any other person till the present Special Civil Application is finally heard and decided by this Hon'ble Court.”

4. The facts of the case are that the petitioner had set up a chemical industry in GIDC, Vapi. He was desirous of having a residential plot in industrial estate in GIDC, Vapi. It is the say of the petitioner that he is entitled to have a residential plot at the rates of 13th June 1983, the ate on which the petitioner applied for allotment.

The petitioner pursued the matter by writing letter dated 6th July 1993 to the Divisional Manager, respondent no.2 herein. The petitioner also approached Shri Ramanlal Patkar, MLA, who forwarded his application to the Divisional Manager, respondent no.2. The petitioner also approached Shri Jaynarayan Vyas, who also forwarded the application of the

petitioner to the President of the GIDC.

The GIDC replied to the Hon'ble Minister by letter dated 29th May 1999 that, 'the case of the petitioner was recommended by the Hon'ble MLA, Ramanlal Patkar; that at Vapi Industrial Estate, residential plots are not available in proportion to the demand; that the applicant is at priority no.631, taking that into consideration, for the present there is no possibility of allotting residential plot to the petitioner'.

The corporation (GIDC) had already written a letter dated 6th September 1993 to the petitioner informing him that we are in receipt of letter dated 22nd June 1993. 'We have scrutinised our record and it is found that your application is at serial no.631 in the priority list, that the corporation has decided to allot the plots on the basis of the priority fixed as per the receipt of the application, as and when your priority number will reach, you will be informed about allotment of the residential plot by letter'. The petitioner felt contented with the aforesaid

communications; one to his own application and the other one forwarded through the Hon'ble Minister.

5. It is only after the Right to Information Act having come into operation the petitioner applied for the information giving details of allotted 'residential plots' after 1st April 1994 at Vapi Industrial Areas. The respondent corporation furnished a list of 46 allotments in favour of different parties, Annexure 'G' to this petition. The list starts at serial no.18 and ends at serial no.63.

6. The learned advocate Mr.Bharda contended that these allottees were not allotted plot by auction. He submitted that the allottees at serial nos.26, 27 and particularly 31, allotment is at a token price of Re.1.00 (Rupee one only). He submitted that 'area' allotted is also exceptional, i.e. 1350, 13125 and 7000 sq. mtrs respectively. Mr.Bharda, the learned advocate for the petitioner later on corrected and submitted that the area allotted to Sr. No.31 is not 7000 sq.mtrs, but it is only 1800 sq.mtrs. However,

he submitted that the facts are not disputed by the respondents.

7. This Court issued notice on 3rd March 2006 along with notice as to interim relief returnable on 28th March 2006 and was pleased to grant ad interim relief in terms of para 10B. The corporation appeared through the learned advocate and filed reply affirmed by one Shri Sushilbhai Babubhai Patel, an assistant wherein it is stated that,

> “8. I say that since 20.09.1995 the GIDC's policy for allotment of residential plots underwent a drastic change. The allotment of residential plots as per 'priority' list was scrapped. From 1994 all allotments of residential plots were on the basis of 'auction'.
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> 9. I say that the existing 'priority list' was discontinued and all pending demands from sr.no.478 onwards were left out. That meant that the application of residential

plots from 4.7.1981 onwards missed the bus. The petitioner under reference applied on 13/30.6.2003 and was at sr. no.631 in the priority list. So, there has been no discrimination or any fraud committed on him by GIDC. .. ..”

It is also stated in para 12 that,

“I say that however, the petitioner seems to be hiding the fact that the Housing Plot No.1210 (H-II) 600 sq.mtrs at Chanod Colony, Vapi stands allotted to him (viz.Mukeshchandra Sanatrai Bhatt of K.P. Chemicals) since 21.11.1996 by virtue of an auction at Rs.1333/- per sq. mtr. The plot was offered on 4.10.1996 and after the payment was made, it was allotted on 21.11.1996. The agreement and possession advice were issued on 25.11.1996. The possession of the plot was given on 2.12.1996 to the petitioner and the plan approval was issued on 21.1.1997.

It is not understood why the petitioner has been trying to hide such vital fact and making efforts for probably a second piece of residential plot in the name of K.P. Chemicals at Vapi.

It is submitted that this amounts to suppression of material facts and therefore, on this ground only the petition deserves being dismissed in limine.”

8. On earlier occasion when the matter was heard, the learned advocate Mr.Bharda for the petitioner emphatically submitted that the averments made in para 8 does not contain required details. Therefore, respondent corporation was asked to file further affidavit. Mr.Bharda submitted that in para 7 it is mentioned that till 1994 residential plots were alloted on the basis of priority list, whereas in para 8 it is stated that, 'since 20.09.1995 GIDC's policy for allotment of residential plots underwent drastic change'. It is also stated in para 8 that,

'from 1994 all allotments of residential plots were only by way of auction'.

Today the learned advocate for the respondent corporation filed an additional affidavit wherein para 2 is as under:

> “I say that in para 8 of the affidavit in reply it is stated that since 20.9.1995 the GIDC's policy for residential plots underwent a drastic change. The allotment of the residential plots as per priority list was scrapped and from 1994 all allotment of the residential plots were on the basis of auction.
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> I say that there is some inadvertent mistake in clarifying the facts. I say that in fact the resolution was past (sic.) on 4.10.94 wherein it was decided to scrap the policy of allotment of residential plots as per the priority list from 4.10.94 and cancel the application of the concerned applicants.

> Accordingly the petitioner's application was also cancelled and he was informed about the same in September 1995. .. ..”

It is also submitted though the said affidavit that, 'the petition filed by the petitioner is barred by limitation,' as it was within the knowledge of the petitioner that the aforesaid scheme was closed and he was also informed by the respondent about the same in the year 1995, (in support of this submission a xerox copy of the register is enclosed) still the petitioner chose to approach this Court only in the year 2006 by filing the petition on 1st March.

9. When the learned advocate Mr.Bharda is confronted with the non mentioning of the fact of the petitioner being in possession of residential plot no.1210 (H-II) admeasuring 600 sq.mtrs at Chanod Colony, Vapi, the learned advocate for the petitioner submitted that he has not incorporated these facts as the same were not supplied to him by the petitioner.

10. In a matter of 'suppression of material facts'

the petitioner must take the consequences. Present is a clear case of 'suppression of material facts'. Therefore, on this ground alone the matter deserves to be not only dismissed but with exemplary cost so as to send a message to the persons like the petitioner not to pollute the stream of justice and not to invoke the discretionary jurisdiction of this Court in this manner.

Besides, the petition also suffers from the vice of delay and latches. It is pointed out from Annexure 'I' that the name of the petitioner stands in the priority list at serial no.631. This is from xerox copy of the register maintained by the corporation in this regard. In the last column of the register, against entry no.631, it is mentioned 'closed' on 22.9.95. The learned advocate for the respondent submitted that this shows the 'application' of the petitioner was closed and he was intimated about the said 'closure' on account of change of policy by communication dated 22nd September 1995. The learned advocate for respondent submitted that the supporting evidence of communication having been sent to the

petitioner is not readily available with the respondent corporation, but a xerox copy of the letter sent to some other similarly situated person on 20.9.95 and is produced along with the additional affidavit. In the column of 'subject' it is mentioned that, 'Regarding allotment of housing plot in Vapi Industrial Estate'. The letter reads thus,

> “With reference to the aforesaid subject it is to be intimated that as decided by the corporation for allotment of housing plot as an advertisement is give in daily newspaper. In that regard if you are interested to have plot in Dungra Housing Zone then please apply afresh for required area. Its allotment price, necessary deposit, along with scrutiny fee be paid on a draft. Your application is pending with corporation is 'filed' (closed). This is for your information.”

This being so, when the intimation was given to the petitioner in the year 1995, there is no earthly

reason for the petitioner to wait till 2006 and file a petition belatedly. The petitioner desperately tried every possible source contacting the MLA, the Hon'ble Minister to see that (despite the fact that he is in possession of the residential plot) he is alloted yet another plot for the same purpose. The fact that after intimation of the closure of the application in the year 1995, the petitioner did not take any action in the matter till 2006 debars the petitioner on the ground of delay and latches to approach this Court.

11. The petition is dismissed. It is dismissed with cost of Rs.15,000/- (Rupees fifteen thousand only). Deposit of this cost shall be a condition precedent for the petitioner to take recourse to any remedy available before this Court. Notice is discharged. Interim relief granted earlier stands vacated forthwith.

(RAVI R. TRIPATHI, J.)

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